IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 1696 OF 2006

1. Surjeetsingh Dayal Dhupar
and anr. .. Petitioners

Vs.

1. Naleen Premises Co-operative
Society Ltd. .. Respondent

Mr. Rajeev Matkar & Mr. Prasad Pathare for petitioners.

Mr. P.S. Dani for respondent no.1.

CORAM: B.H. MARLAPALLE, J.

Date : June 29, 2006.

P.C.:

1. Heard the learned counsel for the petitioners and the learned counsel for the respondent no.1.

2. Rule. By consent Rule is made returnable forthwith.

3. This petition under Article 227 of the Constitution arises from the order dated 6/9/2005 passed by the learned Member of the Maharashtra State Co-operative Court thereby rejecting Misc.

Application No.199 of 2004 for condonation of delay in filing an appeal under the Maharashtra Co-op. Societies Act, 1960. The Co-operative Court No.2 at Pune passed an award in Dispute No.237 of 1998 on 19/1/2004 and directed the present petitioner no.1 to pay an amount of Rs.1,73,151/- with future interest at the rate of Rs.18% p.a. from 1/1/2004 till the entire amount was deposited and this award came to be challenged by filing an appeal before the Lower Appellate Court but belatedly.

4. The petitioner no.2 - Tarvindersingh Gurcharan Dhupar has filed an affidavit before this court stating that the arrears of the maintenance charges from 1/4/1988 till June 2006 will be paid as per the schedule given below:

(a) Maintenance charges from 1/4/1988 to 30/9/1998 amounting to Rs.39,060/- shall be paid by 12th July 2006.

(b) Maintenance charges from 1/10/1998 to 31/12/2003 amounting to Rs.40,858/- shall be

paid by 15th August, 2006.

(c) Maintenance charges from 1/1/2004 to June 2006 shall be paid in September, 2006.

. Thus, the only issue that remains to be decided will be regarding the correctness of the maintenance charges and the interest levied by the Co-operative Court.

5. It appears that in filing the appeal there was a delay of about 10 months and in support of the prayer for condonation of the same, the reason of illness was advanced before the Lower Appellate Court and it was not satisfied to treat that as the good and sufficient reason. However, now that the petitioner no.2 has submitted an affidavit and undertaken to remit the maintenance charges, interest of justice would be met if the delay is condoned and the appeal of the petitioners is decided on merits.

6. Hence the petition is partly allowed and the

delay caused in filing the appeal before the Maharashtra State Co-op. Appellate Court is hereby condoned by allowing Misc. Application No.199 of 2004. However, it is made clear that the appeal shall be registered by the Lower Appellate Court only after 15th August, 2006 on verifying the proof for payment of maintenance charges till 31/12/2003. The operation of the award passed by the Co-operative Court will stand stayed till 15/8/2006. It is also made clear that the petitioners' failure to comply with the undertaking regarding the payment of maintenance charges as stated hereinabove will invite Contempt Proceedings before this court and the stay granted to the Co-operative Court's award would automatically stand vacated.

7. Rule is made absolute accordingly with no order as to costs.

(B.H. Marlapalle,J.)